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JOTENDRO. NAUTH MITTER v. RAJ KRISTO MITTER.

objection ought not to prevail. If a guardian had been appointed, he might have applied; but none having been appointed, it is open to the next friend to apply.

The next question is as to the transfer of the suit. On the evidence, I think I ought to make the order, and I will state the grounds on which I make it. The major portion of the property, *i.e.*, 49/85th., is in Calcutta. The remaining, 36/85th., though not within the ordinary original civil jurisdiction of this Court, is in the immediate vicinity of Calcutta. Secondly, if the plaintiff obtains a decree declaring his right to partition, the effect would be to make an Ameen of the Alipore Court the person to partition Calcutta property. I can hardly think of anything more inconvenient than that a Mofussil Ameen should be introduced into Calcutta to partition Calcutta property. In the third place, though I do not lay much stress on this reason, I believe this suit is one which can be more cheaply and expeditiously tried in this Court than in the Mofussil. On the whole, I think, for these reasons, that I ought to make the order.

Rule made absolute.

Attorney for Nobin Kissory Dassee and Raj Kristo Mitter: Baboo *Shamal Dhone Dutt.*

Attorney for Jotendro Nath Mitter: Baboo *Kali Das Bhunjo.*

H. T. H.

ORIGINAL CIVIL.

Before Mr. Justice Norris.

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July 13.

IN THE GOODS OF A. J. PRIMROSE (DECEASED.)

Practice—Power of Attorney—Evidence Act (Act I of 1872), s. 85—Letters of Administration, Application for.

On an application for letters of administration to the estate of a deceased, who was domiciled in Scotland, and to whose estate one *P* had been appointed executor *dative quâ Father*, the application being made by one *K* under a power of Attorney granted by *P*, such power not having been executed and authenticated in the manner provided by s. 85 of the Evidence Act,

Held, that the application must be refused.

THIS was an application in Chambers made on the 11th July for letters of administration (with effect throughout the whole of British

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India) to the property and credits of one Arthur John Primrose. The petitioner was one Andrew James Ker, a resident of Calcutta, and in his petition he stated that the deceased was in his life-time and at the time of his death a British subject domiciled in Scotland, a member of the Bengal Civil Service, and latterly residing at No. 22, Moray Place, Edinburgh, Scotland, and was not a person exempted under s. 332 from the operation of the Indian Succession Act; that he was drowned while crossing from Ostend to Dover on or about the 12th day of September 1888, leaving property and effects within the Presidency of Bengal to be administered unto; that he died without issue, and without having been married, and without having made any will or testament, or any other deed or deeds, instrument or instruments in writing, whereby the property he was possessed of, previous to his death, could be legally disposed of; that Bouverie Francis Primrose, who was the father of the deceased, had been appointed executor *dative quâ Father* of the said Arthur John Primrose, conform to decree dative of the Sheriff of the Lothians and Peebles, dated 22nd February 1889, and duly confirmed as such conform to Testament Dative in his favour by the said Sheriff, dated the 4th day of May 1889, as appeared from the Testament Dative sealed with the seal of the Commissariat of the County of Edinburgh, and signed by the Clerk of the Court at Edinburgh, a copy of which was annexed to the petition; that the said Bouverie Francis Primrose was residing beyond the jurisdiction of the High Court, and had, by his power of attorney (annexed to the petition), appointed one Harold Robertson King and the petitioner jointly and severally his attorneys and attorney, for him and in his name and on his behalf, to apply for and obtain a grant of letters of administration to the estate of the said deceased from the High Court, or any other competent Court in British India, and do and sign all things necessary for obtaining such letters of administration, and generally to do all such acts, deeds, matters and things as should be requisite and necessary in and about the premises; that the petitioner was therefore desirous of obtaining letters of administration to the property and credits of the said deceased; that such property and credits which were likely to come into his hands, consisted of shares and

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other moveable property, of the value of Rs. 27,326, or thereabout; and that no previous application had been made for a grant of probate or letters of administration to the estate of the said deceased, with effect throughout the whole of British India.

The manner in which the power of attorney, executed by Bouverie Francis Primrose in favour of the petitioner and Harold Robertson King, was executed, appears sufficiently stated in the judgment of the High Court.

The application was made by Mr. *Cowie* (Messrs. *Sanderson & Co.*), and the Court took time to consider whether the power of attorney could be accepted as sufficient to act on.

On the 13th July the following judgment was delivered by:—

NORRIS, J.—On Thursday, an application was made to me in Chambers by Mr. Cowie for letters of administration to this estate to be granted to the Hon'ble Bouverie Francis Primrose under these circumstances:

It appears that Mr. Arthur John Primrose, who was a member of the Bengal Civil Service, was drowned in crossing from Ostend to Dover, and on application to the Sheriff of the Lothians and Peebles, his father, Bouverie Francis Primrose, was appointed, what is called in Scotch law, Executor *Dative quâ Father*, and executed a power of attorney in Scotland in favour of the applicant here, authorizing him to take out letters of administration. The power of attorney was executed in the presence of Mr. Rutherford, a writer to the Signet, and J. McGillawie, a law clerk. Mr. Rutherford makes a declaration before the Lord Provost of Edinburgh, in which he declares that the power of attorney is signed by Mr. B. F. Primrose, and that the signatures of the witnesses are of their own proper hand-writing. The Lord Provost certifies, under the seal of the Corporation of the City of Edinburgh that Mr. Rutherford had made the declaration before him. Upon this, I have been asked to grant letters of administration. Trevelyan, J., granted an application for letters of administration in the goods of Emma Louisa Algeo, when one of the witnesses to the power of attorney made a declaration before the Lord Mayor of London. He has informed me that he was told it had been the practice to accept such declaration, and he did not feel at liberty to depart from the practice. Section 85

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of the Evidence Act provides that the Court shall presume that every document purporting to be a power of attorney, and to have been executed before and authenticated by a Notary Public or any Court, or Judge, Magistrate, British Consul or Vice-Consul, or Representative of Her Majesty or of the Government of India, was so executed and authenticated. This power of attorney is not executed before or authenticated by any of the persons mentioned in the section, and in order to comply with the provisions of the section, the power of attorney must be executed before or be authenticated by one of those persons. Therefore, I am reluctantly obliged to refuse this application. I have considered it necessary to say these few words in order that the profession might know what the practice is in future to be. The two cases, namely, *Anonymous* case (1) and *In the goods of Macgowan* (2) confirm the view I have taken.

Application refused.

Solicitors for applicant: Messrs. *Sanderson & Co.*

H. T. H.

CRIMINAL MOTION.

Before Mr. Justice Trevelyan and Mr. Justice Banerjee.

IN THE MATTER OF THE PETITION OF ASLU AND OTHERS.

ASLU *v.* THE QUEEN-EMPRESS.*

1889 *July* 23.

Security for keeping the peace—Magistrate of the District—Appellate Court—Criminal Procedure Code (Act X of 1882), ss. 106, 423.

The Magistrate of a District when acting as an Appellate Court is not competent to make an order under s. 106 of the Criminal Procedure Code (Act X of 1882), requiring the appellant to furnish security for keeping the peace.

IN this case the petitioners and one Abdul Wahed Khan were charged before the Assistant Magistrate of Midnapore with rioting under s. 147 of the Penal Code. They were all convicted and sentenced to fines of various amounts, or, in default, to various terms of rigorous imprisonment.

* Criminal Motion No. 291 of 1889, against the order passed by C. Vowell, Esq., District Magistrate of Midnapore, dated the 25th of April 1889, affirming the order passed by Stevenson Moore, Esq., Assistant Magistrate of Midnapore, dated the 18th of March 1889.

(1) Fulton, 72. (2) Morton, 370.